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MONTANA LEGISLATIVE HISTORY

Chapter 515 19 89

Bill H 490 S _____ Original bill & history ✓C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 17	✓C	Hearing Date(s)	Mar 18	✓C
	Feb 18	✓C		Mar 21	✓C
		C			C
		C			C
Date Out	Feb 18	✓C		mar 23	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1/26	INTRODUCED		
1/26	REFERRED TO STATE ADMINISTRATION		
2/05	HEARING		
2/05	COMMITTEE REPORT--BILL PASSED		
2/07	2ND READING PASSED	99	0
2/09	3RD READING PASSED	95	0
	TRANSMITTED TO SENATE		
2/11	REFERRED TO STATE ADMINISTRATION		
2/20	HEARING		
2/24	COMMITTEE REPORT--BILL CONCURRED		
3/03	2ND READING CONCURRED	46	4
3/05	3RD READING CONCURRED	36	13
	RETURNED TO HOUSE		
3/10	SIGNED BY SPEAKER		
3/10	SIGNED BY PRESIDENT		
3/11	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 80 EFFECTIVE DATE: 3/13/87		

HB 470 INTRODUCED BY MILES, ET AL.
GENERALLY REVISE PROCEDURE OF YOUTH COURT AND LAW REGARDING YOUTH OFFENDER

1/26	INTRODUCED		
1/26	REFERRED TO JUDICIARY		
1/27	FISCAL NOTE REQUESTED		
2/02	FISCAL NOTE RECEIVED		
2/17	HEARING		
2/18	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	87	2
2/21	3RD READING PASSED	91	1
	TRANSMITTED TO SENATE		
2/23	REFERRED TO JUDICIARY		
3/18	HEARING		
3/23	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	50	0
3/30	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/07	2ND READING AMENDMENTS CONCURRED	87	2
4/08	3RD READING AMENDMENTS CONCURRED	89	2
4/10	SIGNED BY SPEAKER		
4/11	SIGNED BY PRESIDENT		
4/11	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 515 EFFECTIVE DATE: 10/01/87		

HB 471 INTRODUCED BY DARKO, ET AL.
PROVIDING FOR LICENSING AND REGULATION OF DIETITIANS AND NUTRITIONISTS

1/26	INTRODUCED		
1/26	REFERRED TO BUSINESS & LABOR		
1/27	FISCAL NOTE REQUESTED		
1/30	HEARING		
2/02	FISCAL NOTE RECEIVED		
2/09	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/11	2ND READING PASSED AS AMENDED	83	14

HOUSE BILL NO. 470

INTRODUCED BY MILES, VAN VALKENBURG

IN THE HOUSE

JANUARY 26, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 18, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 19, 1987	PRINTING REPORT.
FEBRUARY 20, 1987	SECOND READING, DO PASS.
FEBRUARY 21, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 91; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 23, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 23, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN.
MARCH 30, 1987	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

House BILL NO. 470

INTRODUCED BY Niles Van Valkenburg

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE YOUTH COURT PROCEDURES; REVISING TRANSFER TO DISTRICT COURT PROVISIONS; ALLOWING WIDER INVESTIGATORY AUTHORITY FOR LAW ENFORCEMENT PERSONNEL; REVISING PUBLICITY, RECORD RETENTION, AND ACCESS TO RECORDS; ALLOWING A WIDER RANGE OF SENTENCES FOR DELINQUENT YOUTH; AMENDING SECTIONS 41-5-103, 41-5-202, 41-5-206, 41-5-301, 41-5-303 THROUGH 41-5-305, 41-5-402, 41-5-502, 41-5-522, 41-5-523, AND 41-5-601 THROUGH 41-5-604, MCA; AND REPEALING SECTION 41-5-516, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(7) "Judge", when used without further qualification, means the judge of the youth court.

(8) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and

INTRODUCED BILL
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convincing proof.

(10) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents, foster parents, physical custodian, or guardian or is ungovernable and beyond their control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in 41-3-102.

(15) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(16) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.

(17) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth, such as Pine Hills school in Miles City, and Mountain View school in Helena.

(18) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary substitute care of youth in physically restricting facilities.

(20) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made under the jurisdiction of a youth court proceeding.

(21) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if

necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian. Nothing in this definition is intended to include juvenile correctional facilities, evaluation facilities, mental health facilities and services, and aftercare programs operated by the department of institutions."

Section 2. Section 41-5-202, MCA, is amended to read:

"41-5-202. Disqualification of judges. The statutes of the state of Montana relating to disqualification of judges in ~~civil~~ criminal proceedings shall apply to all proceedings under this chapter."

Section 3. Section 41-5-206, MCA, is amended to read:

"41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, or mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

~~(F) sexual intercourse without consent as defined in 45-5-503;~~

~~(G)~~ (F) aggravated kidnapping as defined in 45-5-303;

~~(H)~~ (G) possession of explosives as defined in 45-8-335;

~~(I)~~ (H) criminal sale of dangerous drugs ~~for profit~~ as included in 45-9-101;

~~(J)~~ (I) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)~~(I)~~ (H);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury;

(c) notice in writing of the time, place, and purpose

of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there ~~are reasonable grounds~~ is probable cause to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

~~(c) the severity of the offense;~~

~~(d) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services, and facilities currently available to the youth court.~~

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

~~(3)~~(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

~~(4)~~(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

~~(5)~~(6) Upon order of the youth court transferring the case to the district court, the county attorney shall file

the information against the youth without unreasonable delay.

~~(6)~~(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and ~~acceptance by~~ order of the ~~district~~ youth court judge.

~~(7)~~(8) If a youth is found guilty in district court of any of the offenses ~~enumerated in subsection (1) of this section~~ transferred by the youth court and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper; however, no youth under 16 years of age may be confined in the state prison."

Section 4. Section 41-5-301, MCA, is amended to read:

"41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms thereof, the probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the department of social and rehabilitation services.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether such detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or

the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken;

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and his parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403, provided such treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a

delinquent youth or a youth in need of supervision. The application must be supported by such evidence as the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

~~(6)~~(7) A petition charging a youth held in detention must be filed within 5 working days from the date the youth was first ~~detained~~ taken into custody or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

~~(7)~~(8) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed."

Section 5. Section 41-5-303, MCA, is amended to read:

"41-5-303. Rights of youth upon ~~apprehension~~ questioning. When a youth is detained for ~~investigation or~~ questioning upon a matter which could result in a petition alleging that the youth ~~being detained~~ is either delinquent

or in need of supervision, the following requirements must be met:

(1) The youth shall be ~~immediately and effectively~~ advised of his ~~constitutional rights and his rights under this chapter~~ right against self-incrimination and his right to counsel.

(2) The youth may waive such rights under the following situations:

(a) when the youth is ~~under the age of 12~~ 16 years of age or older, ~~the parents of~~ the youth may make an effective waiver;

(b) when the youth is ~~over~~ under the age of ~~12~~ 16 years and the youth and ~~his parents~~ a parent or guardian agree, they may make an effective waiver; ~~and~~ or

(c) when the youth is ~~over~~ under the age of ~~12~~ 16 years and the youth and his ~~parents~~ parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel."

Section 6. Section 41-5-304, MCA, is amended to read:

"41-5-304. ~~Fingerprints~~ Investigation, fingerprints, and photographs. (1) ~~Title 46 shall apply to all~~ All law enforcement investigations relating to ~~a complaint alleging~~ a delinquent youth or youth in need of supervision, ~~except that~~ must be conducted in accordance with this chapter and Title 46.

~~(a)~~(2) no A youth may be fingerprinted or photographed for criminal identification purposes; ~~except by order of the youth court judge;~~

(a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged would constitute a felony if the act had been committed by an adult.

~~(b) no fingerprint records or photographs may be filed with the federal bureau of investigation, the Montana department of justice, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation;~~

~~(2)~~(3) Fingerprint records and photographs ~~shall be retained by the originating agency only until the youth reaches the age of majority unless the judge orders the records destroyed at an earlier date. Any such record~~ may be used by the originating agency for comparison and identification purposes in any other investigation ~~only when probable cause is established before the youth court judge~~

~~that the youth is a principal suspect."~~

Section 7. Section 41-5-305, MCA, is amended to read:

"41-5-305. Detention and shelter care of youth. (1) A youth taken into custody may not be detained in a jail or other facility for detention purposes unless:

(a) he has allegedly committed an act which if committed by an adult would constitute a criminal offense; and:

~~(a)~~ the alleged ~~act~~ offense is one ~~of the following:~~ specified in 41-5-206;

~~(i) criminal homicide as defined in 45-5-101;~~

~~(ii) arson as defined in 45-6-103;~~

~~(iii) aggravated or felony assault as defined in 45-5-202;~~

~~(iv) robbery as defined in 45-5-401;~~

~~(v) burglary or aggravated burglary as defined in 45-6-204;~~

~~(vi) sexual intercourse without consent as defined in 45-5-503;~~

~~(vii) aggravated kidnapping as defined in 45-5-303;~~

~~(viii) possession of explosives as defined in 45-8-335;~~

~~(ix) criminal sale of dangerous drugs for profit as included in 45-9-101; or~~

~~(x) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(i) through (1)(a)(ix);~~

(b) he has escaped from a correctional or detention facility;

(c) he has violated a valid court order or an aftercare agreement; ~~or~~

(d) his detention is required to protect persons or property;

(e) he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(f) there are not adequate assurances that he will appear for court when required; or

~~(d)~~(g) he meets ~~the~~ additional criteria for detention established by the youth court in the judicial district that has current jurisdiction over him.

(2) A youth taken into custody may not be sheltered prior to the hearing on the petition except when:

(a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family."

Section 8. Section 41-5-402, MCA, is amended to read:

"41-5-402. Communications privileged. An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto may not be used against the declarant in any proceeding under this chapter, nor may the incriminating statement be admissible in any criminal proceeding against the declarant. This section does not apply to the use of voluntary and reliable statements that are offered for impeachment purposes."

Section 9. Section 41-5-502, MCA, is amended to read:

"41-5-502. Summons. (1) After a petition has been filed, summons shall be served directly to:

(a) the youth;

(b) his parent or parents having actual custody of the youth or his guardian or custodian, as the case may be; and

(c) such other persons as the court may direct.

(2) The summons shall:

(a) require the parties to whom directed to appear

personally before the court at the time fixed by the summons to answer the allegations of the petition;

(b) advise the parties of their right to counsel under the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears ~~from any sworn statement presented~~ to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If any youth is in shelter care or detained under any provision of this chapter pending an adjudication, the court, upon petition of the youth, his parents or guardian, or his counsel, shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such detention or shelter care and the form the detention or shelter care should take. All mentioned

parties shall be notified of such petition process at the time of initial detention or shelter care.

(6) The youth court judge may also admit the youth to bail in accordance with Title 46, chapter 9."

Section 10. Section 41-5-522, MCA, is amended to read:

"41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of financial liability as provided in 41-3-1123 and 41-3-1124.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian ~~who--gives--his--consent--and~~ whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to

subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523~~(1)(f)~~, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim, however the ability of the victim or his insurer to stand any loss may not be considered in any case."

Section 11. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place the youth for substitute care into a youth care facility as defined in 41-3-1102 or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

~~(e)--such-further-care-and-treatment-or-evaluation-that the-court-considers-beneficial-to-the-youth;-or~~

~~(f)~~(e) order restitution by the youth~~,~~ or his parents;

(f) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(g) require the performance of community service;

(h) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(i) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(j) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate; or

(k) such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths.

(3) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(4) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(5) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(8) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana)

) ss.

County of .....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ...., A.D. 19...

.....

Judge"

Section 12. Section 41-5-601, MCA, is amended to read:

"41-5-601. ~~Publicity~~ Confidentiality. (1) No ~~publicity~~ information shall be given ~~to-the-identity-of-an-arrested~~ concerning a youth or to any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a ~~delinquent-youth-or~~ youth in need of supervision ~~except-as-provided-in-subsection-(2)~~.

(2) When a petition is filed under 41-5-501, publicity may not be withheld ~~as-to--the--identity--of~~ regarding any youth formally charged with or proceeded against as or found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the

youth were an adult. All court proceedings must be open to the public with the exception of the transfer hearing specified in 41-5-206 if the youth court finds that a failure to close the hearing would jeopardize the right of the youth to a fair trial.

(3) In all cases the victim is entitled to all information concerning the identity and disposition of the youth."

Section 13. Section 41-5-602, MCA, is amended to read:

"41-5-602. Law enforcement records. (1) No law enforcement records concerning a youth~~,--except--traffic records,~~ may be open to public inspection or their contents disclosed to the public ~~unless--the--records--are--directly related--to--an--offense--to-which-publicity-must-be-allowed under-subsection-(2)-of-41-5-601--or~~ unless inspection is ordered by the court.

(2) Inspection of law enforcement records concerning a youth, which records are not open to public inspection under subsection (1), is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(d) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(e) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(f) the county attorney; or

(g) the youth, his parent, guardian, or counsel."

Section 14. Section 41-5-603, MCA, is amended to read:

"41-5-603. Youth court records. (1) Youth court records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the

sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this chapter, shall also be made available to the counsel for the parties to the proceedings.

(3) ~~All---other---court---records,--including--docket,~~ **petitions** Petitions, motions, and other **papers** pleadings filed in a case, ~~transcripts--of--testimony,~~ including findings, verdicts, orders, and decrees, shall be open to public inspection ~~by--those-persons-and-agencies-listed-in subsection-(1)-of--this--section--and--the--parties--to--the proceedings--and--their--counsel~~ only when related to an offense for which access must be allowed under 41-5-601.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this chapter to receive such information, unless otherwise ordered by the judge.

(5) After youth court records, reports of preliminary

inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (1); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority."

Section 15. Section 41-5-604, MCA, is amended to read:

"41-5-604. Disposition of records. (1) All youth court ~~findings, orders, judgments, and the legal and social files~~ and records ~~of the court, probation services,~~ and law enforcement ~~agencies~~ records except fingerprints and photographs pertaining to a youth coming under this chapter shall be physically sealed when the youth reaches the age of 18 years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection

shall be subject to contempt of court.

(4) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after 10 years from the date of sealing. ~~The records of youths who were 28 years old or older on July 1, 1974, may be destroyed with the consent of the youth court judge or county attorney.~~

(5) ~~This~~ The requirements for sealed records in this section shall not apply to youth traffic records or to records directly related to an offense to which ~~publicity~~ access must be allowed under ~~subsection (2) of~~ 41-5-601."

NEW SECTION. Section 16. Youth court hearings -- priority. All hearings and other court appearances required under Title 41, chapter 5, must be given priority by the court and must be scheduled to be heard as expeditiously as possible.

NEW SECTION. Section 17. Repealer. Section 41-5-516, MCA, is repealed.

NEW SECTION. Section 18. Codification instruction. Section 16 is intended to be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to section 16.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB470, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise youth court procedures; revising transfer to district court provisions; allowing wider investigatory authority for law enforcement personnel; revising publicity, record retention, and access to records; allowing a wider range of sentences for delinquent youth; amending sections 41-5-103, 41-5-202, 41-5-206, 41-5-301, 42-5-303 through 41-5-305, 41-5-402, 41-5-502, 41-5-522, 41-5-523, and 41-5-601 through 41-5-604, MCA; and repealing section 41-5-516, MCA.

ASSUMPTIONS:

1. The amendment made to 41-5-602(1) means that the Department of Justice may not issue motor vehicle reports (MVR) to requesting insurance companies.
2. The percentage of drivers under the age of 18 is the same percentage of the number of MVR requests for drivers under 18.
3. The MVR revenue collected in FY86 will continue constant in FY88 and FY89.
4. The Department of Justice would have to revise computerized motor vehicle report generation to edit records of drivers under the age of 18 from being released.
5. There is no fiscal impact on the Department of Social and Rehabilitation Services due to the proposed law.
6. There is no data available to adequately assess whether there would be a fiscal impact on the judiciary.

FISCAL IMPACT:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:	$ 0	$ 9,000	$ 9,000	$ 0	$ 0	$ 0
Revenues:						
General Fund	$ 735,000	$ 710,000	($ 25,000)	$ 735,000	$ 710,000	($ 25,000)
Net General Fund Impact:			($ 36,000)			($ 25,000)

David L. Hunter DATE 1/31/89
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Joan Miles DATE
JOAN MILES, PRIMARY SPONSOR

Fiscal Note for HB470, as introduced.

HB 470

Rep. Daily asked Rep. Vincent to explain what per se means. He suggested that Mr. McGrath could give a tight legal description of this phrase. He stated that DUI is driving under the influence and per se means having .1 percent alcohol in the blood. Mr. McGrath further stated that when someone is convicted of per se, there does not have to be proof of driving, just that they were in control of a vehicle. In a per se offense there is no mandatory jail sentence.

Rep. Mercer asked Rep. Vincent why we are treating people differently if it is their first per se or DUI. He stated that the rationale is deterrent because it does not make sense to put someone in jail for a mandatory one day for the first offense and let them go entirely for the second offense. Rep. Mercer pointed out that the question is: If someone has .1 in their blood and they are driving a car, there is not a mandatory 24 hours jail time but there is if they are convicted of a DUI.

Rep. Mercer asked the same question to Mr. McGrath. He explained that he does think it is healthy to preserve the no jail time per se and then have the penalties the same for second offense. The per se offense gives the authorities a very valuable tool to plea bargain with on first offense DUI cases.

Rep. Vincent closed the hearing on HB 668 by stating that whether it is DUI or per se the person is still drunk and is still dangerous. He pointed out that we must overcome the idea that we help people in situations like this by being kind. With the deterrent effect like this bill has in it there can be an accounting for society by stating that next time there will be a high price to pay. He strongly felt that this bill will be good step towards making Montana's roads, streets and highways safer.

HOUSE BILL NO. 470, Rep. Miles, District No. 45, stated that this bill revises the youth court procedures and revises the transfer to District Court provisions allowing wider investigatory authority for law enforcement personnel.

She submitted a handout explaining the bill section by section. (Exhibit A). She further explained that the fiscal note is in error. The language will be retained with regard to opening up traffic records to the public.

MIKE MCGRATH, Lewis and Clark County Attorney, Chairman of the Legislative Committee, explained some of the changes that are taking place in the bill. He stated that the Youth Court Act was written in 1970, and we now need more tools to deal with today,s youth.

ROBERT MC CARTHY, Butte-Silver-Bow County Attorney, stated that along with all the members of the County Attorneys Association he is in support of this legislation. He pointed out that this is a realistic attempt to address the problems that are facing the citizens of Montana.

GREG MULLOWNEY, Deputy County Attorney of Yellowstone County, agreed with the changes in this bill and felt they are absolutely necessary at this time. He strongly urged adoption of this legislation.

BOB BUTOROVICH, Sheriff of Butte Silver-Bow, went on record in support of HB 470. He stated that law enforcement needs the authority to expand, and finger printing and photographing youths arrested for felonies can only be done pursuant to search warrants and must be supported by probable cause.

MARC RACICOT, Attorney General's Office, stated that at least 20 homicides have been committed by teenagers within the last 18 to 36 months. There is currently a crime wave. This is a very important piece of legislation that will allow authorities a fighting chance in a lot of the criminal investigations being done presently.

MIKE SHAFFER, President of the Montana Sheriff and Peace Officers Association, stated that they support this bill because it has the tools built in it that the law enforcement needs.

RICHARD MEEKER, Chief Probation Officer of the First Judicial District, spoke on behalf of the Juvenile Probation Association and stated that this bill is an attempt to bring the Youth Court more in line with the adult system. He acknowledged that this bill does remove some important protection, but the goal appears to be sincerely motivated. He urged support for this legislation.

OPPONENTS:

ED SHEEHY, JR., Lewis and Clark Public Defender, stated that he opposes this bill but does find some parts of it useful. He pointed out that his main concern with HB 470 has to do with the transfer hearing because the changes being proposed make that hearing a joke for a youth charged with a serious felony. In homicide cases of a youth 16 years or older the bill says that the court shall transfer the hearing, so, why have a hearing at all. Finger printing and photographs are already in the law and they are retained until the youth reaches the age of majority or the court orders them destroyed at an earlier point in time. He also stated he is concerned with the provisions dealing with a 16 year youth waiving his rights when he is being detained for

questioning. He can talk about the crime and authorities can only advise him of his rights against self incrimination and right to counsel. He feels it is important that the youth be advised of all of his rights under the Youth Court Act. The law says, if the youth is 16 years or older, the youth and his parents may waive his rights and Mr. Sheehy pointed out that that is important so that we can guarantee a knowing and voluntary waiver of rights. He further stated that this bill is unnecessary in terms of anything that is happening in the State of Montana and there are procedures that law enforcement can and do utilize under the law that do not inhibit the investigation of the crime. He also objected to public access to transfer hearings.

QUESTIONS (or Discussion) ON HOUSE BILL NO. 470:

Rep. Rapp-Svrcek stated that he has the same concerns that Mr. Sheehy has especially with regard to the youth being allowed to make a waiver of his rights. He asked Mr. McGrath about subsection (a) questioning that this may do a disserve to the youth. Mr. McGrath pointed out that the youth is not being treated any differently than any criminal.

Rep. Miles closed the hearing on HB 470 by stating that the language on page 14, points out that finger printing records and photographs may be used by the originating agency for comparison and identification purposes only when probable cause is established by the youth court judge.

HOUSE BILL NO. 577, Rep. Brown, District No. 72, explained that this is an act to require 16 hours of training for adult and juvenile probation officers. Under the present system the Department is supposed to provide a certain number of hours of training but it is not consistent. He submitted amendments. (Exhibit A).

PROPONENTS:

MIKE MCCARTY, Probation and Parole Officer, Missoula, stated that training is paramount. He urged support for this legislation.

STEVE NELSON went on record in support of HB 577.

There were no opponents and no questions.

Rep. Brown closed the hearing on HB 577.

HOUSE BILL NO. 610, Rep. Brown, District No. 72, sponsor, stated that this bill amends two sections of Montana law regarding Montana parole and probation officers trained in

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 18, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 18, 1987, at 7:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Eudaily who was excused.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 393:

Rep. Gould moved that HB 393 DO PASS. Rep. Gould moved amendments. Question was called and a voice vote was taken. The motion CARRIED 13-1, with Rep. Hannah dissenting. Rep. Mercer stated that the 180 days should be stricken because the Supreme Court says that Human Rights Commission will have 12 months. Rep. Gould moved the insertion of 12 months. Question was called and a voice vote was taken. The motion CARRIED 12-2 with Reps. Giacometto and Hannah dissenting. (See Amendments Attached). Rep. Gould moved that HB 393 DO PASS as amended. Question was called and a voice vote was taken. The motion CARRIED 13-1 with Rep. Hannah dissenting. HB 393 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 448:

Rep. Darko moved that HB 448 be tabled. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 448 TABLED.

ACTION ON HOUSE BILL NO. 470:

Rep. Miles moved that HB 470 DO PASS. Rep. Miles stated that there is a drafting error on page 26 of the bill and moved to amend it by inserting "except traffic records". Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Rapp-Svrcek moved to amend by returning to the original language of the bill on line 10. Question was called and a voice vote was taken. The motion CARRIED 8-7. (See Amendments Attached). Rep. Addy moved to amend the bill by returning to the original language on lines 3-6, page 13. Question was called and a voice vote was taken. The motion CARRIED 12-4. Rep. Miles moved that HB 470 DO PASS AS AMENDED. Question was called and a voice

vote was taken. The motion CARRIED unanimously. HB 470 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 371:

Rep. Gould moved that HB 371 DO PASS. Rep. Brown moved a substitute motion that HB 371 DO NOT PASS. He stated that this bill is not reasonable. Rep. Addy pointed out that a young man must disclose his social security number at the age of 18. Rep. Giacometto opposed the motion. Question was called and a voice vote was taken. The motion CARRIED 10-6. HB 371 DO NOT PASS.

ACTION ON HOUSE BILL NO. 502:

Rep. Darko moved that HB 502 DO PASS. Rep. Addy opposed the motion. Rep. Mercer stated that this bill is not needed. Rep. Bulger moved a substitute motion to table HB 502. A voice vote was taken and the motion CARRIED 15-1, with Rep. Giacometto dissenting. HB 502 TABLED.

ACTION ON HOUSE BILL NO. 660:

Rep. Strizich moved that HB 660 be tabled. A voice vote was taken and the motion CARRIED unanimously. HB 660 TABLED.

ACTION ON HOUSE BILL NO. 351:

Rep. Hannah moved that HB 351 be tabled. A voice vote was taken and the motion CARRIED 15-1, with Rep. Cobb dissenting. HB 351 TABLED.

ACTION ON HOUSE BILL NOS. 604 AND 605:

Rep. Miles moved that HB 604 and 605 be tabled. A voice vote was taken and the motion CARRIED unanimously. HB 604 and 605 TABLED.

ACTION ON HOUSE BILL NO. 680:

Rep. Hannah opened discussion on the bill. Rep. Mercer stated that this bill deals with negative treatment and he does not have a problem with it. Rep. Bulger stated that he opposes this bill. Rep. Addy pointed out that HB 680 requires a 2/3 vote and if a woman is considering an abortion, then the doctor must tell her everything, with regard to her medical condition.

Rep. Bulger moved that HB 680 be tabled. A voice vote was taken and the motion CARRIED 11-4 with Reps. Hannah, Meyers, Cobb and Keller dissenting. HB 680 TABLED.

STANDING COMMITTEE REPORT

FEBRUARY 18, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 470

XXX ☐ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

XX ☐ as amended
☐ statement of intent attached

Chairman

AMENDMENTS AS FOLLOWS

1) Page 13, line 3
Following: "adversary"
Insert: "immediately and effectively"

2) Page 13, lines 5 and 6
Strike: "right against" on line 5 through "counsel" on line 6
Insert: "constitutional rights and his rights under this chapter"

3) Page 13, line 9
Strike: "16"
Insert: "under the age of 12"
Strike: "of"

4) Page 13, line 10.
Strike: "age or older"
Following: "parents of"
Insert: "the parents of"

5) Page 13, line 12.
Strike: "under"
Insert: "over"
Strike: "16"
Insert: "12"

6) Page 13, line 13.
Strike: "a parent or guardian"
Insert: "his parents"

7) Page 13, line 14.
Strike: "or"
Insert: "and"

FIRST WHITE
reading copy (color)

8) Page 13, line 15
Strike: "under"
Insert: "over"
Strike: "16"
Insert: "12"

9) Page 13, line 16
Strike: "parent or guardian"
Insert: "parents"

10) Page 26, line 12
Following: "records,"
Insert: ", except traffic records,"

Chairman.

STATE PUB. CO.
Helena, Mont.

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 18, 1987

The forty-fifth meeting of the Senate Judiciary Committee was called to order on March 18, 1987 at 10:00 a.m. in Room 325 of the state Capitol, by the chairman, Senator Joe Mazurek.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL 470: Representative Joan Miles, Helena, gave the committee a summary on House Bill 470. (Exhibit 1) She agreed with the McGrath amendments.

PROPONENTS: Senator Van Valkenburg, Missoula, supported the bill. He said it will establish a public policy that will help the youth of Montana. He said there is a real need for communication with the youth about the consequences they might face if convicted of a crime. He felt kids that commit adult crimes should be treated as adults.

Mike McGrath, Lewis and Clark County Attorney, went through the bill section by section. He said the bill will make the 16 year-old youth make his own decision when it comes to procedures, after being caught. He said Juvenile Court supports it. He gave the committee amendments to the bill to clear up some language problems. (Exhibit 2)

Patrick Paul, District Attorney for Cascade County, favored the bill.

OPPONENTS: There were none.

DISCUSSION ON HOUSE BILL 470: Senator Mazurek asked on page 26, about the confidentiality part, which a victim is prevented from finding out all the information about the convicted or charged youth.

Mr. McGrath said the law right now, will not let the court disclose to the victim who attacked him. Senator Mazurek asked if there is any prohibition in the bill against the victim going to the press with the name of a youth who committed the crime. Mr. McGrath said no, and would like to leave it that way because you can't restrain people like that. Senator Mazurek said it doesn't make sense to

not have any confidentiality at all in a youth's case.

Senator Mazurek wanted to know what the amendments will do in section 13 of the bill. Mr. McGrath stated it will allow law enforcement records of a youth to be treated like adult records.

Senator Blaylock questioned Senator Van Valkenburg if this bill will prevent kids from committing crimes. Senator Van Valkenburg said yes, this would be a strong effort to prevent crimes. Senator Blaylock said he had doubts if tougher approaches were the best way to go.

Representative Miles closed the hearing on HB 470.

CONSIDERATION OF HOUSE BILL 344: Representative Asay, House District 27, presented the bill to the committee. (Exhibit 3) He said the bill needed an amendment that will allow the provisions of this bill to be applied to any cases that have not been filed.

PROPONENTS: Gary Neely, Montana Medical Assn., supported the bill in its current form. Mr. Neely distributed amendments to HB 344. (Exhibits 4 and 4A)

Chad Smith, Montana Hospital Association, stated in 1986, Columbus Hospital in Great Falls, paid $180,386 for malpractice insurance. He said Billings Deaconess paid $175,000 for 253 beds for malpractice insurance; That was an increase of 34% over last year. He said in 1985, there were only 24 claims throughout the state that only totaled $25,000. He stated that in 1986, all Montana hospitals paid a total of $1,672,000 for insurance. He felt this bill could help, with an amendment he presented. (Exhibit 5) He presented the committee with a letter from Dr. Jeffrey H. Strickler of the American Academy of Pediatrics. (Exhibit 6) Dr. Strickler supported HB 344.

Bill Rossback, Montana Trial Lawyers Assn., said the statute of limitations starts when a child is in school because of the groups of people that can watch a child and can tell if something went wrong when the child was at the age of 0 to 4 years old. He stated that is when the doctors are most involved with a child, at the ages of 0 to 4. He said the statute of limitation is preserved until the child is 8 years old because the big damage cases are usually discovered before they are 8 years old. Mr. Rossback said his group compromised with this bill and cut the statute of limitations in half. He said he didn't agree with the Neely amendment because the statute

EXHIBIT NO. 1
DATE March 18, 19
BILL NO. HB 470

Summary of HB 470: General Revisions of Youth Court Procedures

p 1. Section 1

Amends "Youth in need of supervision" definition to reflect a common situation where we have youths who commit offenses and habitually disobey foster parents and other physical custodians, as well as parents.

p 5. Section 2

Allows each party in a Youth Court proceeding one opportunity to disqualify a judge, rather than 2 chances under present law.

p 5. Section 3

Amends provisions dealing with transfer to criminal court; includes felony assault, provides for "probable cause" - a more widely used and legally understood term, clears up some language, and provides for an automatic transfer to district court if the youth is 16 or older, and is charged with deliberate or mitigated deliberate homicide.

p 9. Section 4

Must be probable cause before petition can be filed (after a youth taken into custody) if the matter is referred to the county attorney. This is a standard that applies in adult cases and broadens rights of youths taken before court.

p 12. Section 5

Clarifies the rights of a youth upon questioning and amends provisions dealing with waiver of rights. "Waiver of rights" section amended out in House Judiciary

p 13. Section 6

Expands authority to fingerprint and photograph youths arrested for felonies, pursuant to a search warrant if supported by probable cause. Also, records could be retained and used in other investigations.

p 15. Section 7

Revises provisions regarding detention and shelter care of youth. Broadens criteria, similar to adults, concerning when a youth can be held. (Bail rights provided under Section 9).

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-18-87
BILL NO. H.B. 470

17. Section 8

Continues the privilege for communications made by youth to counselor or probation officer. However, if court testimony is in contradiction to privileged statements, the statements may be used for impeachment purposes.

17. Section 9

Provides for bail provisions for youth before Youth Court.

19. Section 10

Allows the Youth Court to require, if necessary, examination of the parents or guardian prior to a dispositional hearing.

21. Section 11

Expands the judge's authority in sentencing a delinquent youth or youth in need of supervision.

25. Section 12

Revises publicity provisions to open all court proceedings regarding youths charged as delinquents (except for a transfer hearing). Continues to prohibit publicity regarding youths in need of supervision.

26. Section 13

Prohibits the public disclosure of law enforcement's records This conforms the Youth Court Act to the provisions regarding adults.

27. Section 14

Youth Court records (documents, petitions, pleadings, etc.) open to public inspection when related to an offense for which access allowed under Section 12 (not a major change from present law).

29. Section 15

Provides that fingerprints and photographs (allowed in Section 6) excluded from requirements for sealing youth court records). Records not to be sealed for felony cases where access allowed under Section 12.

30. Section 16

New section to require that all youth court proceedings must be scheduled and heard as expeditiously as possible. Section 17 repeals existing statute requiring that a youth court petition must be taken to trial on the merits within 15 days.

SENATE JUDICIARY
EXHIBIT NO. 2
DATE March 18
BILL NO. HB 470

PROPOSED AMENDMENTS

TO HOUSE BILL 470

1.) Section 5, page 13, line 4.
Strike: "IMMEDIATELY AND EFFECTIVELY"

2.) Section 5, page 13, lines 6 and 7.
Strike: "CONSTITUTIONAL RIGHTS AND HIS RIGHTS UNDER THIS CHAPTER"
Insert: "RIGHT AGAINST SELF INCRIMINATION AND HIS RIGHT TO COUNSEL"

3.) Section 5, page 13, line 10.
Following: "~~16~~"
Strike: "UNDER THE

4.) Section 5, page 13, line 11.
Strike: "AGE OF 12"
Insert: "16"
Following: "~~elder~~"
Insert: "OF AGE OR OLDER"
Following: "~~of~~"
Strike: "THE PARENTS"

5.) Section 5, page 13, line 12.
Strike: "OF"

6.) Section 5, page 13, line 13.
Following: "~~under~~"
Strike: "OVER"
Insert: "UNDER"

7.) Section 5, page 13, line 14.
Strike: "12"
Insert: "16"

8.) Section 5, page 13, line 15.
Strike: "HIS PARENTS"
Insert: "A PARENT OR GUARDIAN"

9.) Section 5, page 13, line 17.
Following: "~~under~~"
Strike: "OVER"
Insert: "UNDER"

10.) Section 5, page 13, line 18.
Strike: "12"
Insert: "16"

11.) Section 5, page 13, line 19.
Strike: "PARENTS"
Insert: "PARENT OR GUARDIAN"

12.) Section 13, page 26, line 12.
Following: "(1)"
Strike: "No"

13.) Section 13, page 26, line 14.
Following: "~~records,~~"
Strike: ", EXCEPT TRAFFIC RECORDS,"

14.) Section 13, page 26, line 15.
Following: "public"
Insert: "IN THE SAME MANNER AS ADULT RECORDS UNDER THE PROVISIONS OF TITLE 44, CHAPTER 5"

15.) Section 13, page 26, line 18.
Following: "~~er~~"
Strike: "unless"
Insert: "OR WHEN"
Following: "inspection"
Insert: "OR DISCLOSURE"

SENATE JUDICIARY
EXHIBIT NO 2

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 21, 1987

The forty-eighth meeting of the Senate Judiciary Committee was called to order at 9:00 a.m. on March 21, 1987, by the chairman, Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All members were present with the exception of Senators Blaylock and Crippen, who were excused.

EXECUTIVE SESSION

ACTION ON HOUSE BILL 696: Senator Halligan moved to TABLE House Bill 696. Senators Galt, Brown, Beck and Bishop voted no. The motion FAILED because of a tie. The committee decided to wait on action until Senators Blaylock and Crippen returned.

ACTION ON HOUSE BILL 509: Valencia Lane explained the amendments she had prepared. (Exhibit 1) Senator Pinsoneault checked into the aircraft safety laws and found one is legally drunk in a plane at .04. Senator Mazurek thought the 5th amendment should strike "to have been" in the 10th line, and insert "was". The committee agreed. Senator Pinsoneault moved the changed amendments. The motion carried. Senator Pinsoneault moved House Bill 509 BE CONCURRED IN AS AMENDED. The motion CARRIED.

ACTION ON HOUSE BILL 504: Valencia Lane explained the prepared amendments. (Exhibit 2) Senator Mazurek asked how one determines in HB 504 amendment #3, (i), what is "serious and material" in violating qualification for the ballot. Senator Brown suggested illegal signatures. He felt one would have to have quite a few to make a difference. Senator Mazurek suggested taking "serious and material" out of the amendments. The committee agreed. Senator Brown moved the amendments, and the motion carried. Senator Brown moved House Bill 504 BE CONCURRED IN AS AMENDED. The motion carried with Senators Halligan and Pinsoneault voting no.

ACTION ON HOUSE BILL 470: Valencia Lane presented prepared amendments. (Exhibit 3) Senator Mazurek felt the amendments left wide open, juvenile records, which he did not like.

He didn't like Title 45, Chapter 5. Senator Mazurek suggested deleting section 13 of the bill and leaving the record section the way it was. Ms. Lane explained section 6 includes finger prints, which would deal with juvenile records. Senator Halligan MOVED TO STRIKE section 13 of the bill and maintain the record section the way it stands now. The motion CARRIED.

Senator Mazurek said in section 12, he didn't know if it was wise to allow the victim of a crime by a juvenile to know the identity of the juvenile or their background, unless it disclosed important factors.

Senator Galt said if a delinquent youth broke your arm, you would want to know. Senator Galt asked if a youth gets to stay in youth court if he commits a serious offense. Senator Mazurek said sometimes a serious juvenile offender does stay in youth court because they can't do anything to him anyway until he is 21 years old.

Senator Pinsoneault said last session the legislature passed a bill allowing 16 year olds to be tried as adults. Senator Mazurek stated that was correct. Ms. Lane said on page 7 of the bill, there is a list of crimes that a youth can be tried as an adult for. She pointed out on page 22, line 3, it states the restitution by the parents. Senator Pinsoneault said some parents make kids do time in jail or pay the fine to teach them to respect the law. Senator Mazurek reminded the committee the parents are only liable if the youth lives at home. Senator Mazurek asked if the committee wanted to limit restitution for parents. The committee responded no. Senator Brown MOVED the change in the amendments. The motion CARRIED.

Senator Brown moved the bill BE CONCURRED IN AS AMENDED. Senators Yellowtail and Mazurek voting no, the motion CARRIED.

ACTION ON HOUSE BILL 73: Ms. Lane gave the committee amendments. (Exhibit 4) The committee added an amendment to make the sentence structure more clear. (See Standing Committee Report) The committee discussed the first proposed amendment. Senator Mazurek didn't like the fact the youth couldbe tried as an adult in this bill. The committee decided against that amended language and put in the second amendment on the Standing Committee Report. The committee adopted the second proposed amendment. (See Exhibit 4 and 3rd amendment on Standing Committee Report). The committee did not agree on the third proposed amendment because it was compatible to the

STANDING COMMITTEE REPORT

March 23 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 470

Third reading copy (blue color)

Generally revise procedure of youth court and law regarding youth offender. Miles (Van Valkenburg)

Respectfully report as follows: That HOUSE BILL No. 470

1. Page 13, line 4.
Strike: "IMMEDIATELY" through "EFFECTIVELY"

2. Page 13, lines 6 and 7.
Strike: "CONSTITUTIONAL" on line 6 through "CHAPTER" on line 7
Insert: "right against self-incrimination and his right to counsel"

3. Page 13, lines 10 and 11.
Strike: "UNDER" on line 10 through "12" on line 11
Insert: "16"

4. Page 13, line 11.
Following: "~~elder~~"
Insert: "of age or older"

5. Page 13, lines 11 and 12.
Strike: "THE" on line 11 through "OF" on line 12

6. Page 13, line 13.
Strike: "OVER"
Insert: "under"

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Senator Mazurek Chairman.

7. Page 13, line 14.
Strike: "12"
Insert: "16"

8. Page 13, line 15.
Strike: "HIS PARENTS"
Insert: "a parent or guardian"

9. Page 13, line 17.
Strike: "OVER"
Insert: "under"

10. Page 13, line 18.
Strike: "12"
Insert: "16"

11. Page 13, line 19.
Strike: "PARENTS"
Insert: "parent or guardian"

12. Page 26, line 11 through page 27, line 12.
Strike: section 13 in its entirety
Renumber: subsequent sections

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~~XXXXXXXXXXXXXXXXXXXXXX~~

13, Page 30, line 22.
Strike: "16"
Insert: "15"

14. Page 30, line 24.
Strike: "16"
Insert: "15"

AND AS AMENDED
BE CONCURRED IN

Senator Manuel